IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 182 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAMPATRAJ C SHAH

Versus

LAJPATRAI C AGRAWAL

Appearance:

MR SB VAKIL for Petitioners

MR SV RAJU for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/09/1999

C.A.V. JUDGEMENT

This is an Appeal from Order dated 16.1.1992 of the Additional Principal Judge, Ahmedabad City Civil Court on an application for interim mandatory injunction and prohibitory injunction, partly allowing injunction application and granting mandatory injunction in terms of paragraph 9(B) of the application for temporary injunction.

2. Application Exh. 5 shows that as many as six reliefs were sought, out of which relief (B) only was

granted by the trial court and the other reliefs were refused. The prayer in relief (B) is for issuing mandatory interim order to restore the original name of Chaturbhuj Lajpatrai General Hospital and to display the said name on all the sign-boards on the main gate and by the side of the main gate and inside the hospital building and at all other places including literatures, letter heads, stationeries, registers and all other literatures of whatever kind in which the name of the hospital is mentioned till the hearing and disposal of the suit.

3. A suit for permanent injunction as well as mandatory injunction was filed by the plaintiff respondents in the court below in which through application Exh. 5 interim mandatory as well as prohibitory injunctions were claimed. The brief facts are that the plaintiffs are the trustees of Chaturbhuj Lajpatrai Education Trust (hereinafter referred to as C.L. Trust) which is registered with the Charity Commissioner, Gujarat State, Ahmedabad. The plaintiff No. 2 is the Managing Trustee of C.L. Trust and defendant Nos. 1 to 5 are trustees of Rajasthan Seva Samiti (for short `Samiti') which is another trust registered with the Charity Commissioner, Ahmedabad. The plaintiffs and the defendant Nos. 5 to 15 are the trustees of Gujarat Research and Medical Institute (for short `Institute') which is another charitable trust registered with the Charity Commissioner, Ahmedabad. The Samiti wanted to construct a large hospital and it invited donations from interested donors. A scheme was announced under which the proposed hospital was to be given a name as may be desired by the persons of the trust which donates Rs. 11 lakhs. C.L. Trust was persuaded to donate Rs. 11 lakhs on the condition that the name of the said hospital would be given as "Chaturbhuj Lajpatrai General Hospital". The Samiti, namely the defendant No. 1 accepted the said donation from the plaintiffs. Name of the hospital as Chaturbhuj Lajpatri General Hospital was to be displayed in particular bold letters of 10 inches on the main gate of the hospital as well as on the building of the hospital. Donation was given by the plaintiff trust. Samiti, however, could not for various reasons start the hospital, hence in July 1982 through a lease-deed it conveyed land along with the project of the hospital to the defendant Nos. 6 to 15 for the aforesaid purpose. One of the conditions in the said lease was that the lessee may start medical activities other than the said hospital and is free to give separate names to such activities and bodies running such activities under it.

Another important condition in the lease deed was that the lessee shall set up and run the hospital in the name of "Rajasthan Seva Samiti Nirmit The Gujarat Research and Medical Institute Sanchalit Chatarbhuj Lajpatrai General Hospital". It was also stipulated in the lease deed that the lessee was not entitled to change the said name of the hospital. The hospital therefore came to be known as C.L. General Hospital. The hospital was inaugurated on 15.11.1984. Since then the hospital was known and named as C.L. General Hospital. All literatures for and on behalf of the hospital were printed accordingly. It was alleged that three days before the institution of the suit when the plaintiff No. 2 was passing by the said hospital he noticed that on the main entrance gate of the hospital name was written as `Rajasthan Hospital'. Prior to this the plaintiff never received any information of such change of name. On the gate of the hospital the plaintiff No. 2 noticed that it was written as "The Gujarat Research and Medical Institute Dwara Sanchalit Rajasthan Hospitals Camp Road Shahibaug" and below it was inscribed "Chatarbhuj Lajpatrai General Hospital" and below it was inscribed "Godavaridevi Gordhandas Gupta Eye Netra Hospital and blow it was inscribed "Gulabdevi Sohanlal Chaudhary Urology (Kidney) Hospital" and below it was inscribed "Chhogalal Jugraj Salecha Orthopaedic Hospital". The plaintiff No. 2 was shocked to notice that the name of Gujarat Research and Medical Institute and Rajasthan Hospital were written in bold letters and the remaining four names were written in small letters. On enquiry the plaintiff could not obtain information under whose orders or directions such change of name was given effect to. The plaintiff No. 1 was not served with any notice of change or any Resolution proposing such change of name of the hospital. Accordingly, suit was filed in which permanent and mandatory injunctions were sought and through application Exh. 5 temporary, mandatory and prohibitory injunctions were pressed.

5. The application was resisted by the defendant Nos. 1 to 5. In their reply various objections were taken regarding maintainability of the suit, non-joinder of necessary parties etc. The other two defendants also contested the injunction application. There is no dispute regarding change of name of the hospital. However, the contesting defendants pleaded that the plaintiffs have no preferential rights and if other donors donated the amount and various medical activities were commenced in the hospital and name of those donors were written on the hospital complex, no injunction as prayed for can be granted. It was also pleaded that mandatory injunction of this nature cannot be granted and

there was no prima facie case, balance of convenience and irreparable loss and injury in favour of the plaintiffs , hence no injunction much less mandatory injunction could be granted.

6. The trial judge through a lengthy order discussed prima facie case and found that the plaintiffs succeeded in establishing prima facie case. In one line the trial court found that the balance of convenience and hardship was in favour of the plaintiffs. Consequently, the injunction was granted. It is therefore this appeal.

7. Learned counsel for the parties were heard at length. It was suggested at the outset that instead of fighting about a decade on the injunction application it would have been better for them to have got the suit decided during this period. However, this suggestion did not work out and the parties suggested that the appeal be disposed of on merits. Accordingly the Appeal from Order is proposed to be disposed of on merits.

8. Shri S.B. Vakil, learned counsel for the appellant, contended that mandatory injunction of this nature could not be granted and if it was granted it practically amounts to decreeing the suit and except in very rare and most urgent cases, no such mandatory injunction could be granted. On the point of prima facie case, balance of convenience and irreparable loss and injury it was contended by Shri Vakil that these ingredients also could not be satisfied by the plaintiffs, hence the trial court fell in error in granting mandatory injunction during the pendency of the suit.

9. The law on the subject of grant of injunction namely prohibitory or mandatory is quite settled. For claiming prohibitory as well as mandatory injunction the plaintiff has to establish a strong prima facie case in his or its favour. The plaintiff is also to establish that the balance of convenience in granting injunction lies in his favour and in case the injunction is refused, irreparable injury would be caused to the plaintiff or the plaintiffs. Unless these three conditions are established no injunction, mandatory or prohibitory can be granted. If any of the three conditions is not fulfilled, injunction cannot be granted in favour of the plaintiffs.

10. So far as interim mandatory injunctions are concerned, courts have taken consistent view that it should be rarely granted and not easily granted in favour

of the plaintiff. The reason behind this view has been that if mandatory injunction is granted at the interim stage it would practically amount to decreeing the suit and as such care and caution should be taken to grant interim mandatory injunction only in appropriate cases. Interim mandatory injunctions are claimed under various circumstances. The first circumstance may be that certain situation existed prior to the institution of the suit and that situation was altered by the defendant before the institution of the suit. If mandatory injunction is sought in such circumstances, the court will normally refuse to grant mandatory injunction. No mandatory injunction can be granted to restore the status quo which existed prior to the date of institution of the suit. If, however, some change was effected by the defendant on a date when the suit was filed, in appropriate cases where irreparable loss and injury is likely to be caused to the plaintiff, mandatory injunction of interim nature can be granted. Take for example the case where the outlet of domestic water from the house of the plaintiff is blocked by the defendants. The plaintiff rushes to the court on the same date and files a suit for mandatory injunction. In such cases, if domestic water is not allowed to flow outside the house of the plaintiff it may cause irreparable loss and injury to the plaintiff for the reasons that accumulation of dirty and domestic water may cause health hazard to the plaintiff and his family members. In such circumstances if prima facie it is established that the outlet was blocked by the defendant on the date the suit was filed interim mandatory injunction can be granted. Likewise, if after institution of the suit certain alterations were made in the situation and interim mandatory injunction is sought, it can also be granted to restore the position which existed on the date of the suit. Another category of cases may be where the court grants interim temporary injunction and in violation of that interim order the defendant raises construction. In that situation also if in face and knowledge of temporary injunction such construction is raised in flagrant violation of the order of the court, such construction can be ordered to be removed and this would amount to granting interim mandatory injunction restoring the status quo.

11. From the impugned order it is clear that no prohibitory injunction was granted by the lower court. Only mandatory injunction was granted and the application was partly allowed. The point for consideration is whether such mandatory injunction could be granted or not.

12 Few cases have been cited by the trial court in its judgement as well as by the learned counsel for the appellant to suggest that such mandatory injunction cannot be granted.

13 The Calcutta High Court in Nandan Pictures Vs. Art Pictures AIR 1956 Calcutta 428 held that it is only in very rare cases that a mandatory injunction is granted on an interlocutory application and instances where such an injunction is granted by means of an `ad interim' order pending decision of the application itself are almost unknown. If a mandatory injunction is granted at all on an interlocutory application, it is granted only to restore the `status quo' and not granted to establish a new state of things, differing from the state which existed at the date when the suit was instituted. It was held in this case that interim mandatory injunction can be granted against the defendant directing him to restore the position which existed on the date of the suit. On the basis of this judgement Shri S.B. Vakil contended that even according to the plaintiffs the change in the name of the hospital was noticed by the plaintiffs three days before the institution of the suit, hence no direction for restoration of the status quo can be passed and no interim mandatory injunction can be granted.

14 It may be mentioned however that this court in Civil Revision Application No. 326 of 1965 decided on 3.5.1965 took a different view and differed from the view taken by the Calcutta High Court. It was observed in this case that the view of the Calcutta High Court in the subsequent observation in that case that except in the case in which after institution of the suit the defendant has altered the position, no temporary mandatory injunction can be granted is not acceptable. This court proceeded to hold that status quo which is contemplated in this connection is not merely a status quo existing on the date of the suit. If in a particular case it is found that anticipating the filing of a cause of action or in order to claim certain priority towards the right a particular thing is done in such manner that nuisance is created, the court can certainly interfere even to restore the status quo ante i.e at the time on which the disputes between the parties arose.

15. The Delhi High Court in M/s. Magnum Films Vs. Golcha Properties P. Ltd. AIR 1983 Delhi 392 also took a view that a temporary mandatory injunction can be issued only in case of extreme hardship and compelling circumstances and mostly in those cases when status quo existing on the date of the institution of the suit is to

be restored.

16. The Andhra Pradesh High Court in Malla Suranna Vs. K. Somulu AIR 1969 Andhra Pradesh 368 explained the conditions necessary for issue of mandatory injunctions and held that power to issue mandatory injunction of interim nature has to be exercised in very rare cases and with due care and caution. Unless there are exceptional circumstances, the mandatory injunction would not normally be issued. It can be granted to restore the status quo existing on the date of the suit. But such an injunction cannot be claimed as a matter of right nor can it be issued as a matter of course. What has to be seen in such cases is whether the injury complained of is immediate and pressing and irreparable and clearly established by proofs and not acquiesced by the plaintiff. The onus to bring out the exceptional circumstances lies heavily upon the party who seeks the issue of mandatory injunction.

17. From the above cases it is clear, as observed earlier, that interim mandatory injunction has to be granted with due care and caution and in very rare cases. Those rare cases are where extreme hardship is likely to be caused to the plaintiff and where wrong has been done recently and wrong has not been acquiesced by the plaintiff. These special circumstances have to be established by the plaintiffs. It is difficult to accept the contention that in no case interim mandatory injunction can be granted.

18. Like prohibitory injunction while granting interim mandatory injunction courts have to be guided by three essential ingredients, namely, prima facie case, balance of convenience and irreparable loss and injury.

19. On the point of prima facie case the plaintiff has to allege and show that he has substantial case for trial. Mere allegation by the plaintiff and its denial by the defendant would not constitute a strong prima facie case. The plaintiff has to establish prima facie case by bringing on record affidavits, documents etc. to show that there is a strong and substantial case for trial. If it is so established then the courts will further investigate whether refusal to grant injunction will cause irreparable loss and injury to the plaintiff and also whether the balance of convenience in granting injunction lies in favour of the plaintiff.

20 On the first point the trial court has

elaborately discussed the documents on record and prima facie found that there was strong prima facie case in favour of the plaintiffs. This finding does not suffer from any illegality. The trial court has observed in para 7 of the judgement that the resisting parties to the suit have met on the common platform that till the name was sought to be changed in July or August, 1989, the hospital complex was known as Rajasthan Seva Samiti Nirmit Gujarat Research and Medical Institute Sanchalit C.L. General Hospital. The change was effected within two to three days prior to the institution of the suit and the change was to the following effect:

"The Gujarat Research & Medical Institute dwara Sanchalit Rajasthan Hospitals;

(i) Chaturbhuj Lajpatrai General Hospital;
(ii) Godavariben Gordhandas Gupta Eye (Netra) Hospital;
(iii) Gulabdevi Sohanlal Chaudhary Urology (Kidney) Hospital and
(iv) Chhogalal Jugraj Salecha Orthopaedic Hospital".

21. The learned counsel for the appellant vehemently contended that actually there has been no change in the name of the hospital and the name of C.L. General Hospital is already there. On the other hand the units which were subsequently constructed from donations made by other persons that those names were added as units of the Research and Medical Institute. The plaintiff as such can have no objection to such addition of names. However, prima facie the alleged change was that the initial name of the hospital has been changed. Such change of name is prohibited under the lease deed vide paragraph 3(iii) which provides that it is further agreed to by and between the parties that the lessee shall set up and run the said hospital and name it as "Rajasthan Seva Samiti Nirmit The Gujarat Research & Medical Institute Sanchalit Chaturbhuj Lajpatrai General Hospital and the lessee is not entitled to change the said name of the hospital. Thus, there was prohibition in the lease deed in changing the name of the hospital. Even though subsequently the property was handed over by the lessee to the contesting defendants they are also bound by the conditions in the lease deed. There is similar recital in the Articles of Association and as such there is strong prima facie case in favour of the plaintiffs that the name of the hospital could not be changed at the sweetwill of the defendants or some of the defendants. The trial court has rightly observed that there was

nothing on record to show that any complaint was received on account of which the name of the hospital had to be changed. The trial court has further found that subsequent donors also never raised any objections that keeping in view their donations the name of the hospital be changed. It is mentioned in the judgement of the trial court that under some Resolution it was proposed to change the name of the hospital. The plaintiffs were members of the trust and they had never any notice of such meeting nor any agenda of resolution was served nor they had any opportunity to say that the name of the hospital could not be changed. Consequently the action of the defendants in changing the name of the hospital lends support to the plaintiffs' case that there was a strong prima facie case which needs trial namely whether on the facts and circumstances of the case it was really a case of change of name of the hospital and whether on these facts the defendants could be permitted to change the name of the hospital.

22. If a strong prima facie case was established by the plaintiffs, the balance of convenience lies in their favour and they will suffer irreparable loss and injury in case interim mandatory injunction is not issued. The change of name of the hospital was noticed by the plaintiff No. 2 only three days before the institution of the suit. If some secret resolution was passed under which the name of the hospital was changed, the plaintiffs cannot be said to have acquiesced in such change. The suit was filed immediately after three days of noticing the change of name. The plaintiffs being the original donor and in terms of the lease deed, especially para 3(iii) referred to above they have right to say that the name of the hospital need not be changed. If interim mandatory injunction was granted by the trial court, no inconvenience is going to be caused to the patients going to the hospital for receiving various kinds of treatments nor to the members of the staff of the hospital nor to the members of the general public. They will receive medical treatment as before. Even the subsequent donors have not raised any grievance that the original name of the hospital be changed keeping in view the high donations made by them. As such the plaintiffs will suffer irreparable loss and injury if injunction is refused. The balance of convenience also lies in their favour because within the meaning of para 3(iii) of the lease deed the defendants are prima facie not entitled to change the name of the hospital.

23. Thus the interim mandatory injunction in this situation was rightly granted by the trial court. The

plaintiffs succeeded in establishing special circumstances that the defendants are not prima facie entitled to change the name of the hospital.

24. It is not the case where the trial court has blindly granted all the reliefs claimed in the temporary injunction application. It has applied its mind to the controversy between the parties and has chosen to grant only one relief. As such it cannot be accepted that by granting one relief only the entire suit has virtually been decreed. Grant of this and other reliefs is yet to be considered by the court below during the trial of the suit.

Therefore, I do not find any illegality in the impugned order. The appeal has, therefore, to be dismissed and is hereby dismissed with costs.

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Shri S.B. Vakil, learned counsel for the appellant requests for time to approach the apex court in the matter. Four weeks time is granted for the purpose and during this period interim relief which was granted in this Appeal from Order shall remain operative.

(D.C. SRIVASTAVA, J)

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